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PART III.

Legislative Measures and Rules thereunder.

NOTIFICATION.

No. 13—L. C., dated Bangalore, 13th July 1909.

Under Rule 40 of the Rules relating to the conduct of business of the Mysore Legislative Council, the accompanying report of the Select Committee on the Mysore Treasure-Trove Bill is published for general information together with the Bill as amended by the Committee.

By Order,
S. HIRIYANNAIYA,
Secy., Mysore Legislative Council.

Report of the Select Committee on the Treasure-Trove Bill.

WE, the Members of the Select Committee, appointed for the consideration of the Treasure-Trove Bill, beg to submit the following report to the Council. We have given the Bill our best consideration and beg to recommend that it be passed with the following additions and alterations :—

1. CLAUSE 3.—INTERPRETATION.—We presume that no interpretation or definition of the word "Finder" has been attempted either in this Bill or in the British Indian Act, VI of 1878, on which this Bill is based, for the reason that the word is too elementary to require a definition and that the deciding authority is not likely to meet with any difficulty in determining who the "Finder" of a treasure may be in each particular case. But we apprehend that the word may give rise to difficulties under certain circumstances, as for instance where treasure is discovered by a cooly in the course of work done for or at the instance of his master or employer.

We consider that in such cases the latter and not the cooly who actually excavated the treasure should be deemed to be the "Finder." To provide for such cases, we have added the following interpretation of the word "Finder":—

"When any treasure is discovered in the course of any work done at the express or implied direction of any person, such person shall be deemed to be the 'Finder'."

We think also that the right of the Government to treasure found in a place belonging to itself should be made explicit. We accordingly recommend the following additional interpretation of the word "Owner":—

"Where any land is the property of Government under Section 36 of the Land Revenue Code, 1888, the Government shall, for the purposes of this Regulation, be deemed to be the owner of the land or thing affixed thereto."

2. CLAUSE 5, SUB-CLAUSE (*b*).—Provision is made here for special notice being given to the person in possession of the place where treasure is found. We consider that the owner of the place is entitled to a like notice. We have therefore added the words "or belonged to" after the words "possession of" in line 4 of this sub-clause.

3. Under the Bill, antecedent rights of property in the treasure are expressly protected only if the owner can prove that it was hidden within a hundred years. But cases are conceivable where owners of the treasure may establish their right thereto without at the same time being able to prove positively to the satisfaction of a Civil Court that the treasure was so hidden. We consider it very hard that such persons should be refused any kind of consideration. In our opinion, provision should be made for the protection of the rights of other persons than the limited class of persons specially dealt with by clause 8. We accordingly recommend that such persons may be placed on the same footing as the owners of the place. With this view, and following the wording of clause 6, we have inserted the words "or otherwise" (1) after the words "as owner of the place in which it has been found" occurring in clause 11; (2) also after the words "as owner of the place in which the treasure was found" occurring in the proviso to the clause 12 (*b*); and (3) after the words "as owner of the place where such treasure was found" occurring in clause 13. This would meet all legitimate and reasonable claims which ought not to be ignored.

4. PARA 1 OF CLAUSE 12.—We observe that under the Bill the finder is not entitled to more than a lakh of rupees when he has not got to share it with others (*vide* clause 16). There is no reason why this anomaly should prevail. We have therefore inserted the words "not exceeding a lakh of rupees in amount or value" after the words "one half of the treasure" occurring herein and have substituted the word "remainder" for the words "the other half."

5. CLAUSE 19.—In clause 6 it is provided that persons having a right to hidden treasure shall forfeit their right thereto, if they fail to appear within the period fixed in the notification issued under clause 5. This, we are of opinion, is likely to work hardship in the case of persons who may be absent from their ordinary place of residence for long periods or who may be sojourning in distant places or who from other valid cause could not appear as required by the notification. An absolute extinction of right could not be intended in cases where the non-appearance was unavoidable. An intention to re-open an enquiry in such cases is presumable from clause 19, but to place the matter beyond a possibility of doubt, we have made explicit provision for a rehearing in such cases in the manner provided for in the Civil Procedure Code, Chapter VII, so far as the same may be held applicable, and have added the following to the existing Clause 19, namely:—

"and the provisions of Chapter VII of the Code of Civil Procedure shall, so far as may be, apply to proceedings under this Regulation."

6. In conclusion, we beg to note that no provision has been made in the Bill for reasonable compensation being awarded to the finder of a treasure, when an antecedent property therein has been established as contemplated in clause 8. We are of opinion that there should be some inducement to the finder of the treasure not to conceal the find. The existing rules provide that reasonable compensation

including the expenses incurred by the finder be given to him in such circumstances. We leave it to the council to decide whether such a provision should not find a place in this Bill also.

Dated 15th June 1909.

A. RANGASWAMI IYENGAR.
C. SRINIVASIENGAR.
S. NARAYANA RAO.

"I approve in the main of the draft report of the Select Committee on the Treasure-Trove Bill. But I regret that I have to express my dissent with the opinion of my Hon'ble colleagues to retain clause 16. This is a new provision and does not find a place in 'The Indian Treasure-Trove Act, 1878' from which the main provisions are taken in drafting the present Bill.

"The Hon'ble Mr. Bayley who moved the Bill of 1878 in the Imperial Legislative Council has, in my opinion, very wisely waived on certain conditions and on certain limitations, the right of the State to retain any portion of the Treasure-Trove, in favour of the finder, the owner of the soil where it was found, and of the person who could establish a right to such treasure.

"The Law relating to Treasure-Trove, as now administered in British India, is practically the Law of the Middle ages and adopted from the old Roman Law of the Emperor Hadrian the French and Louisianan Codes and to a certain extent the law in force in Denmark.

"In the middle ages, the right of the State to claim any portion of the Treasure-Trove is not recognized. I submit that such a right cannot, on any recognized principle, be defended. Besides, the Hon'ble member in charge of the Bill has not urged any solid reasons in support of such a claim.

"I, therefore, recommend that this new provision as contained in clause 16, be omitted from the Bill.

Dated 12th July 1909.

"B. NAGAPPA."

The Treasure-Trove Bill.

(As amended by the Select Committee.)

A Bill to provide a law relating to Treasure-Trove.

Whereas it is expedient to provide a law relating to Treasure-Trove in Mysore, His Highness the Maharaja is pleased to enact as follows:—

Preamble.

PRELIMINARY.

1. This Regulation may be called "The Mysore Treasure-Trove Regulation, 190 ."

Short title.

It extends to the whole of Mysore;

Extent.

And it shall come into force on the date of the passing thereof.

Commencement.

2. The rules for the disposal of Treasure-Trove published under the late Mysore Chief Commissioner's Notification No. 6, dated the 17th April 1867, are hereby repealed.

Repeal of enactments.

Section 3 of Act VI of 1878.

"Treasure."

"Deputy Commissioner."

3. In this Regulation, "treasure" means anything of any value hidden in the soil, or in any thing affixed thereto; "Deputy Commissioner" means (1) any Revenue Officer in independent charge of a district and (2) any officer appointed by Government to perform the functions of a Deputy Commissioner under this Regulation.

Interpretation clause.

"*Finder.*"

When any treasure is discovered in the course of any work done at the express or implied direction of any person, such person shall be deemed to be the finder.

"*Owner.*"

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Regulation, be deemed to be the owner of such land or thing.

Where any land is the property of Government under Section 36 of the Land Revenue Code, 1888, the Government shall, for the purposes of this Regulation, be deemed to be the owner of the land or thing affixed thereto.

PROCEDURE ON FINDING TREASURE.

Section 4 of Act VI of 1878.

Notice by finder of treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Deputy Commissioner notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found; and

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Deputy Commissioner such security as the Deputy Commissioner thinks fit, to produce the treasure at such time and place as he may from time to time require.

Section 5 of Act VI of 1878.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Deputy Commissioner shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) He shall publish a notification in such manner as the Government from time to time prescribes in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof to appear personally or by Agent before the Deputy Commissioner on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months after the date of the publication of such notification;

(*b*) When the place in which the treasure appears to the Deputy Commissioner to have been found was, at the date of the finding in the possession of, *or belonged to*, some person other than the finder, the Deputy Commissioner shall also serve on such person a special notice in writing to the same effect.

Section 6 of Act VI of 1878.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Section 7 of Act VI of 1878.

Matters to be enquired into and determined by the Deputy Commissioner.

7. On the day notified under section 5, the Deputy Commissioner shall cause the treasure to be produced before him and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstance under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which such treasure was hidden.

Section 8 of Act VI of 1878.

Time to be allowed for suit by person claiming the treasure.

8. If upon an enquiry made under section 7, the Deputy Commissioner sees reason to believe that the treasure was hidden within one hundred years before the date of the finding by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Deputy Commissioner shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

Section 9 of Act VI of 1878.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Deputy Commissioner sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Deputy Commissioner; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Deputy Commissioner may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Government;

subject to such appeal, every such declaration shall be final and conclusive.

Section 10 of Act VI of 1878.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall be disposed of in accordance with the provisions hereinafter contained.

Section 11 of Act VI of 1878.
(slightly modified.)

When no other person claims as owner of place, treasure to be given to finder.

11. When a declaration has been made as aforesaid in respect of any treasure, and no person other than the finder of such treasure has appeared, as required by the notification published under section 5 and claimed a share as owner of the place in which it has been found *or otherwise* the Deputy Commissioner shall, subject to the provisions of section 16, deliver such treasure to the finder thereof.

Section 12 of Act VI of 1878.

When only one such person claims, and his claim is not disputed, treasure to be divided.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed and the claim of such person is not disputed by the finder, the Deputy Commissioner shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) :—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one half of the treasure *not exceeding a lakh of rupees in amount or value* shall be allotted to such finder and the [other half] *remainder* to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Deputy Commissioner may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure on such party paying to the Deputy Commissioner for the other party such sum of money as the Deputy Commissioner may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be ; or

(*b*) with the sanction of Government, and subject to its instructions, if any, sell such treasure or any portion thereof by public auction and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that when the Deputy Commissioner has by his declaration under section 9, rejected any claim made under this Regulation by any person other than the said finder or person claiming as owner of the place in which the treasure was found *or otherwise* such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected or, when an appeal has been so presented, after such appeal has been dismissed.

And shares to be delivered to parties.

When the Deputy Commissioner has made a division under this section, he shall deliver to the parties the portions of such treasure or the money in lieu thereof; to which they are respectively entitled under such division.

Section 13 of Act VI of 1878.

In case of dispute as to ownership of place, proceedings to be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure

was found *or otherwise*, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Deputy Commissioner shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Section 14 of Act VI of 1878.

Settlement of such dispute.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit, the finder of the treasure and all persons disputing such claim before the Deputy Commissioner shall be made defendants.

And division thereupon.

15. (1) If any such suit is instituted and the plaintiff's claim is finally established therein, the Deputy Commissioner shall, subject to the provisions of section 12, divide the treasure between him and the finder.

(2) If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Deputy Commissioner shall deliver the treasure, subject to the provisions of section 16, to the finder.

Section 6 of the Treasure-Trove Rules of 1867, modified.

If value of treasure exceeds one lakh, finder to get one lakh, the excess going to Government in specified cases.

16. If, in the case referred to in section 11 or in sub-section (2) of Section 15, the amount or value of the treasure found exceeds one lakh of rupees, the Deputy Commissioner shall deliver so much of the treasure as is of the amount or value of one lakh of rupees to the finder and shall declare the excess to be at the disposal of Government.

Section 16 of Act VI of 1878.

Power to acquire the treasure on behalf of Government.

17. The Deputy Commissioner may, at any time after making a declaration under section 9 and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire on behalf of the Government the treasure or any specified portion thereof by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Section 17 of Act VI of 1878.

Decision of Deputy Commissioner final and no suit to lie against him for acts done *bona fide*.

18. No decision passed or act done by the Deputy Commissioner under this Regulation shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Section 18 of Act VI of 1878.

19. A Deputy Commissioner making any enquiry under this Regulation, may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits; *and the provisions of Chapter VII of the Code of Civil Procedure shall, so far as may be, apply to proceedings under this Regulation.*

Deputy Commissioner to exercise powers of Civil Court.

Section 19 of Act VI of 1878. (slightly modified.)

20. The Government may, from time to time, make rules, consistent with this Regulation, to regulate proceedings hereunder and, generally, all matters not provided for herein. Such rules shall, on being published in the Official Gazette, have the force of law.

Power to make rules.

PENALTIES.

Section 20 of Act VI of 1878.

21. If the finder of any treasure fails to give the notice or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Penalty on finder failing to give notice, etc.

Section 21 of Act VI of 1878.

22. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 21, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled shall vest in the Government, and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months or with fine or with both.

Penalty on owner abetting offence under section 21.